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8                                   **STATE OF WASHINGTON**  
                                 **LEWIS COUNTY SUPERIOR COURT**

9   STATE OF WASHINGTON,  
10   DEPARTMENT OF ECOLOGY,

11                                   Plaintiff,

12                   v.

13   S.C. BREEN CONSTRUCTION  
14   COMPANY,

                                 Defendant.

NO.

CONSENT DECREE RESOLVING  
ECOLOGY'S PAST COSTS CLAIM  
AGAINST S.C. BREEN  
CONSTRUCTION COMPANY

15                                   **I.       INTRODUCTION**

16           A.       In entering into this Consent Decree (Decree), the mutual objective of the  
17   Washington State Department of Ecology (Ecology), and S.C. Breen Construction Company  
18   (hereafter Defendant) is to settle Ecology's claim against Defendant for all Costs Ecology  
19   incurred through July 31, 1999, relating to the release or threatened release of hazardous  
20   substances at or near the Hamilton Labree Roads Groundwater Contamination Site (the Site).  
21   Ecology has determined that these actions are necessary as part of the process to remediate the  
22   release or threatened release of hazardous substances at or near the Site and to protect public  
23   health and the environment.

24           B.       The Complaint in this action is being filed simultaneously with this Decree. An  
25   answer has not been filed, and there has not been a trial on any issue of fact or law in this case.

1 However, the parties wish to resolve the issues raised by Ecology's Complaint. In addition, the  
2 parties agree that settlement of these matters without litigation is reasonable and in the public  
3 interest and that entry of this Decree is the most appropriate means of resolving these matters.

4 C. In signing this Decree, Defendant agrees to its entry and agrees to be bound by  
5 its terms.

6 D. By entering into this Decree, and except as provided below, the Parties do not  
7 intend to discharge nonsettling parties from any liability they may have with respect to matters  
8 alleged in the Complaint. The Parties retain the right to seek reimbursement, in whole or in  
9 part, from any liable persons for sums expended under this Decree. Furthermore, Ecology  
10 does not intend to waive its right to seek reimbursement for unpaid costs incurred after July 31,  
11 1999, or to order Defendant to perform a remedial action at the Site.

12 E. This Decree shall not be construed as proof of liability or responsibility for any  
13 releases of hazardous substances or cost for remedial action nor an admission of any facts;  
14 provided, however, that the Defendant shall not challenge the jurisdiction of Ecology in any  
15 proceeding to enforce this Decree.

16 F. The Court is fully advised of the reasons for entry of this Decree, and good  
17 cause having been shown:

18 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

## 19 II. JURISDICTION

20 A. This Court has jurisdiction over the subject matter and over the parties pursuant  
21 to Chapter 70.105D RCW, the Model Toxics Control Act (MTCA).

22 B. Authority is conferred upon the Washington State Attorney General by RCW  
23 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after public  
24 notice and hearing, Ecology finds the proposed settlement would lead to a more expeditious  
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1 cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that such a settlement be  
2 entered as a consent decree issued by a court of competent jurisdiction.

3 C. Ecology has determined that a release or threatened release of hazardous  
4 substances has occurred at or near the Site which is the subject of this Decree.

5 D. Ecology has given notice to Defendant, as set forth in RCW 70.105D.020(15),  
6 of Ecology's determination that the Defendant is a potentially liable person for the site and that  
7 there has been a release or threatened release of hazardous substances at the site.

8 E. Defendant consents to the entry of this Decree under the MTCA.

### 9 **III. SETTLEMENT AND PARTIES BOUND**

10 Within thirty (30) days after the effective date of this Decree, Defendant shall pay  
11 Ecology Two Hundred and Twenty-Five Thousand Dollars (\$225,000.00) to completely settle  
12 Ecology's claim against Defendant for all of Ecology's costs and expenses incurred before and  
13 including July 31, 1999. This Decree shall apply to and be binding upon the signatories to this  
14 Decree (parties), their successors and assigns. The undersigned representative of each Party  
15 hereby certifies that he or she is fully authorized to enter into this Decree and to execute and  
16 legally bind such Party to comply with the Decree. Defendant agrees to undertake all actions  
17 required by the terms and conditions of this Decree and not to contest state jurisdiction  
18 regarding this Decree.

### 19 **IV. DEFINITIONS**

20 Except for as specified herein, all definitions in WAC 173-340-200 apply to the terms  
21 in this Decree.

22 A. Site: Refers to the Hamilton/Labree Roads Groundwater Contamination Site,  
23 which includes property currently or formerly owned by Defendant, and the Hamilton Road  
24 Impacted Area, as depicted in Exhibit A to this Decree. Exhibit A is attached and incorporated  
25 into this Decree. Releases from Defendant's property and the Hamilton Road Impacted Area,  
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1 which is upgradient from the Defendant's property, are current known sources of  
2 perchloroethylene (PCE) contamination in groundwater at the Site. The Site also includes all  
3 areas where the PCE groundwater plume attributable to these source areas has come to be  
4 located.

5 B. Parties: Refers to the Washington State Department of Ecology and Defendant.

6 C. Defendant: Refers to S.C. Breen Construction Company, and employees.

7 D. Consent Decree or Decree: Refers to this Consent Decree and each exhibit to  
8 the Decree. All exhibits are integral and enforceable parts of this Consent Decree. The terms  
9 "Consent Decree" or "Decree" shall include any exhibits to the Consent Decree.

10 E. Costs: Refers to all costs and/or expenses incurred by Ecology associated with  
11 staff oversight, travel, laboratory services, contractors, consultants, attorneys, and other  
12 administrative matters or expenses relating to the Site and remedial actions conducted at or  
13 near the Site up to and including July 31, 1999. Costs does not refer to any unpaid costs  
14 incurred by Ecology after July 31, 1999.

## 15 V. STATEMENT OF FACTS

16 Ecology makes the following findings of fact without any express or implied  
17 admissions by Defendant.

18 A. Property located at the intersection of Hamilton Road and Labree Road, south  
19 of Chehalis, Lewis County, Washington is owned or was formerly owned by Defendant. The  
20 Property is further described by the description attached hereto and incorporated into this  
21 decree as Exhibit B.

22 B. PCE contamination was first detected in 1993 when a business along Hamilton  
23 Road was seeking approval of a public water system application for a commercial well. Test  
24 results from the well showed concentrations of PCE at 122 micrograms per liter (ug/L). In  
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1 1993 and 1994, the Washington State Department of Health tested six shallow water supply  
2 wells in the area, with test results yielding PCE levels ranging from 3 ug/L to 2,165 ug/L.

3 C. A large area of groundwater associated with the Site is contaminated with high  
4 levels of PCE (also known as tetrachloroethylene). This groundwater aquifer is the source of  
5 drinking water for numerous residences and business facilities in the area. PCE has been found  
6 to be present at elevated levels, as noted below, in samples taken from several private drinking  
7 and monitoring wells in this area; alternate sources of drinking water have been supplied to  
8 some by Ecology, including one full domestic water treatment system for the Thurman  
9 residence.

10 D. PCE is a suspected human carcinogen. The established maximum  
11 contamination level (MCL) for PCE in groundwater that is a source of drinking water is 5 ug/L  
12 (40 CFR 141.61). Levels of PCE and associated chemicals at the portion of the site owned by  
13 Defendant have included PCE - 10.4 ug/L; cis 1,2 dichloroethylene - 610 ug/L (MCL = 70  
14 ug/L); trans 1,2 dichloroethylene - 5.4 ug/L (MCL = 100 ug/L); and vinyl chloride - 280 ug/L  
15 (MCL = 2 ug/L), down gradient from the Bulldog Trailer building. PCE has been present in  
16 monitoring well MW8 - 1500 to 2000 ug/L, near the wash pad.

17 E. In 1997, utilizing hired contractors, Ecology began the installation of a series of  
18 monitoring wells and direct push borings to further characterize the extent of ground water  
19 contamination and local ground water hydrogeology. In addition, Ecology undertook an  
20 investigation to determine the source(s) of the contamination, including interviews with local  
21 residents and review of historical activities in the area.

22 F. Ecology's investigation of the Site included several interviews with local  
23 residents. Those interviews indicated that a variety of chemical containers were buried on the  
24 site. This evidence suggested that a pit had been dug at the location of the building then  
25 occupied by Bulldog Trailer Manufacturing, 151 Labree Road, Chehalis, WA. In addition,  
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1 information was provided to Ecology that construction equipment was cleaned on a wash pad  
2 located to the south of the construction company maintenance building and that solvents may  
3 have been used in the course of cleaning equipment. The pad drained to a trench or settling pit  
4 beside it.

5 G. In August 1999, Ecology and Defendant negotiated Agreed Order No. DE  
6 99TC-S221 requiring Defendant to undertake a remedial investigation (RI) to determine if  
7 containers of chemical waste had been buried on the Breen property, to determine if other areas  
8 of the property were continuing sources of contaminants to ground water, and to determine the  
9 distribution of contaminants in soil and groundwater. The Agreed Order further required, once  
10 the RI was complete and reported to Ecology, that Defendant conduct a Feasibility Study (FS)  
11 to evaluate a range of remedial options to remove ongoing sources of contamination to ground  
12 water.

13 H. Since July 31, 1999 and through December 2001, Ecology has sent invoices in  
14 the total amount of \$48,496.37 to Defendant for costs attributable to Ecology's investigation of  
15 releases from property owned by Defendant. Defendant has paid all such invoices in full.

16 I. In the summer of 1999, drums of hazardous wastes were found to be buried  
17 beneath the Bulldog Trailer Manufacturing building. Defendant subsequently undertook a  
18 remedial action to remove the drums, waste, contaminated soils, and contaminated  
19 groundwater associated with the cache of buried drums. Samples obtained during this action  
20 showed concentrations of PCE at 8630 ug/L (water), 1,1,1-trichloroethane at 2100 ug/kg  
21 (sludge), methylene chloride at 1270 ug/L (water), cis-1,2-dichloroethene at 4470 ug/L (water),  
22 trichloroethene at 4141 ug/L (water), and vinyl chloride at 2760 ug/L (water).

23 J. In July 2000, the U.S. Environmental Protection Agency (EPA) added the Site  
24 to the National Priorities List (NPL) pursuant to 42 U.S.C. § 9601 et. seq. (CERCLA), and  
25 since that time, has continued to investigate the ground water contamination at the Hamilton  
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1 Road Impacted Area. EPA and Ecology agreed to transfer regulatory oversight for the Site to  
2 EPA. In October 2001, EPA negotiated an Administrative Order on Consent (AOC) with the  
3 Defendant requiring the Defendant to perform additional RI and FS activities, including the  
4 performance of activities not yet completed under the Ecology Agreed Order at the time of the  
5 NPL listing. Activities not completed under the Ecology Agreed Order included further  
6 investigation of potential sources of contamination beyond the Bulldog Trailer location; a  
7 study of the extent and distribution of contaminants in ground water attributable to activities on  
8 the Breen property; and a FS to evaluate a range of remedial options to remove or mitigate  
9 contamination sources on the property. Because the AOC with EPA addressed all matters not  
10 finished under the Agreed Order between the Defendant and Ecology, Ecology agreed to close  
11 out the Agreed Order prior to the satisfaction of its terms by the Defendant.

## 12 **VI. AMENDMENT OF CONSENT DECREE**

13 This Decree may only be amended by a written stipulation among the parties to this  
14 Decree that is entered by the Court or by order of the Court. Such amendment shall become  
15 effective upon entry by the Court. Agreement to amend shall not be unreasonably withheld by  
16 any party to the Decree.

17 Defendant shall submit any request for an amendment to Ecology for approval.  
18 Ecology shall indicate its approval or disapproval in a timely manner after the request for  
19 amendment is received. If the amendment to the Decree is substantial, Ecology will provide  
20 public notice and opportunity for comment. Reasons for the disapproval shall be stated in  
21 writing.

## 22 **VII. OTHER ACTIONS**

23 Ecology reserves its rights to institute remedial action(s) at the Site and subsequently  
24 pursue cost recovery, and Ecology reserves its rights to issue orders and/or penalties or take  
25 any other enforcement action pursuant to available statutory authority for matters outside the  
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1 scope of this Consent Decree (i.e., unpaid costs incurred by Ecology after July 31, 1999,  
2 relating to the Site and not settled in this Consent Decree, and remedial investigation and  
3 cleanup actions relating to the Site). With respect to matters within the scope of this Consent  
4 Decree (i.e., Costs incurred by Ecology through July 31, 1999, relating to the Site), Ecology  
5 reserves its rights to issue orders and/or penalties or take any other enforcement action  
6 pursuant to available statutory authority in the event Defendant fails, after notice, to comply  
7 with any requirement of this Decree.

8 Ecology reserves the right to take any enforcement action whatsoever, including a cost  
9 recovery action, against potentially liable persons not party to this Decree.

#### 10 **VIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

11 By entering into this settlement and Consent Decree, Ecology covenants that it will not  
12 sue Defendant or Defendant's officers, directors, employees, predecessors or successors (if  
13 any) for Costs incurred by Ecology through July 31, 1999. In addition, Ecology expressly  
14 waives and forever releases with prejudice any and all claims it may have against Defendant  
15 and Defendant's officers, directors, employees, predecessors or successors (if any), for Costs  
16 incurred through July 31, 1999. Nothing in this Consent Decree shall be construed to create  
17 any rights in, or grant any cause of action to, any person not a Party to this Consent Decree.  
18 Each of the Parties expressly reserves any and all rights (including, but not limited to, any right  
19 to contribution), defenses, claims, demands, and causes of action which each Party may have  
20 with respect to any matter, transaction, or occurrence relating in any way to the Site against  
21 any person not a Party hereto.

22 The Parties agree, and by entering this Consent Decree this Court finds, that the  
23 Defendant, Defendant's predecessors or successors (if any) are entitled, as of the Effective  
24 Date, to protection from contribution actions or claims as provided by RCW  
25 70.105D.040(4)(d) for matters addressed in this Consent Decree. "Matters addressed" in this  
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1 Consent Decree are all Costs incurred by Ecology through July 31, 1999, relating to the Site  
2 and as settled in this Consent Decree.

### 3 **IX. REMEDIAL AND INVESTIGATIVE COSTS**

4 By entering into this Consent Decree, Ecology does not waive or release any claims  
5 against Defendant for unpaid costs incurred by Ecology after July 31, 1999 and does not waive  
6 the right to order Defendant to perform additional remedial actions relating to the Site.  
7 Defendant reserves all available defenses.

### 8 **X. CLAIMS AGAINST THE STATE**

9 Defendant hereby agrees that it will not seek to recover any costs paid pursuant to this  
10 Decree from the State of Washington or any of its agencies; and further, that the Defendant  
11 will make no claim against the State Toxics Control Account or any Local Toxics Control  
12 Account for any costs incurred in implementing this Decree. Except as provided above,  
13 however, Defendant expressly reserves its right to seek to recover any costs incurred in  
14 implementing this Decree from any other potentially liable person.

### 15 **XI. EFFECTIVE DATE**

16 This Decree is effective upon the date it is entered by the Court.

### 17 **XII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

18 This Decree has been the subject of public notice and comment under RCW  
19 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to  
20 a more expeditious cleanup of hazardous substances at the site.

21 If the Court withholds or withdraws its consent to this Decree, it shall be null and void  
22 at the option of any party and the accompanying Complaint shall be dismissed without costs  
23 and without prejudice. In such an event, no party shall be bound by the requirements of this  
24 Decree.

1 STATE OF WASHINGTON  
2 DEPARTMENT OF ECOLOGY

CHRISTINE O. GREGOIRE  
Attorney General

3  
4 REBECCA LAWSON, P.E.  
5 Regional Section Manager  
Toxics Cleanup Program  
Southwest Regional Office

MICHAEL L. DUNNING, WSBA #29452  
Assistant Attorney General  
Attorneys for Plaintiff  
State of Washington, Department of Ecology

6 Date: \_\_\_\_\_

Date: \_\_\_\_\_

8 S.C. BREEN CONSTRUCTION COMPANY

10 By: \_\_\_\_\_

11 Title: \_\_\_\_\_

12 Date: \_\_\_\_\_

13 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

15  
16 JUDGE  
Lewis County Superior Court